

Message Text

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ORIGIN OPIC-12

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TO AMEMBASSY JAKARTA PRIORITY

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PASS TO USAID RLA CLARK

E.O. 11652: N/A

TAGS: EFIN

SUBJ: KRTP

A. GAUTAMA ADVISED US JULY 9 THAT OPIC WAIVER OF SECS. 5.09(II) AND (III) OF AMENDED LOAN AGREEMENT WILL SATISFY BANK INDONESIA.

B. TO SPEED CLOSING OF THIS LONG-STANDING CASE, OPIC WOULD APPRECIATE USAID/EMBASSY ASSISTANCE IN PASSING COPY OF FOLLOWING TO GAUTAMA ASAP:

1. RECEIVED YOUR JULY 9 TELEX.
2. PLEASE COMMENT SOON ON MULJADI DRAFT LEGAL OPINION REFERRED TO IN OUR RECENT CORRESPONDENCE SO THAT OPIC CAN APPROVE IT.
3. DRAFT OPIC WAIVER OF SECS. 5.09(II) AND (III) OF AMENDED LOAN AGREEMENT REFERRED TO IN YOUR TELEX NOW BEING PREPARED BY KRTP'S U.S. COUNSEL; OPIC WILL FORWARD IT TO YOU UPON RECEIPT.

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4. WILL BANK INDONESIA APPROVAL OF FEB 1974 DRAFT OF AMENDED

LOAN AGREEMENT CONSTITUTE APPROVAL OF FINAL DRAFT AS FURTHER AMENDED TO DATE?

5. FOLLOWING IS RECOMMENDED DRAFT OF YOUR LEGAL OPINION, WHICH SHOULD BE ADDRESSED TO OPIC AND DATED THE CLOSING DATE. PLEASE TELEX SOON ANY COMMENTS YOU MAY HAVE:

GENTLEMEN:

I AM SPECIAL LEGAL COUNSEL FOR THE OVERSEAS PRIVATE INVESTMENT CORPORATION (THE "LENDER") AND DULY QUALIFIED TO PRACTICE LAW IN INDONESIA. YOU HAVE ASKED MY OPINION IN CONNECTION WITH THE AMENDED LOAN AGREEMENT DATED AS OF ----- BETWEEN THE LENDER AND KAYAN RIVER TIMBER PRODUCTS, P.T. (THE "COMPANY").

IN THIS REGARD, I HAVE EXAMINED ORIGINALS OR TRUE COPIES OF SUCH CORPORATE RECORDS OF THE COMPANY, AGREEMENTS AND OTHER INSTRUMENTS, LICENSES AND OTHER GOVERNMENTAL RULINS, OTHER DOCUMENTS AND LEGAL CONSIDERATIONS AS I HAVE DEEMED RELEVANT TO THIS OPINION. AS TO QUESTIONS OF FACT, I HAVE RELIED UPON WRITTEN STATEMENTS AND CERTIFICATES OF THE OFFICERS AND REPRESENTATIVES OF THE COMPANY. (EACH TERM OF THIS OPINION BEGINNING WITH CAPITAL LETTERS SHALL HAVE THE DEFINITIONS GIVEN IN THE LOAN AGREEMENT).

BASED UPON THE FOREGOING IT IS MY OPINION THAT:

1. THE COMPANY IS DULY ORGANIZED CORPORATION EXISTING IN GOOD STANDING UNDER THE LAWS OF THE REPUBLIC OF INDONESIA, HAS THE CORPORATE POWER TO OWN ITS PROPERTY AND TO CARRY ON ITS BUSINESS AS NOW BEING CONDUCTED AND AS PROPOSED TO BE CONDUCTED, AND IS DULY AUTHORIZED AND QUALIFIED TO DO BUSINESS AND IS IN GOOD STANDING IN EVERY JURISDICTION IN WHICH THE NATURE OF ITS BUSINESS MAKES SUCH AUTHORIZATION OR QUALIFICATION NECESSARY; AND NO ADDITIONAL AUTHORIZATION OR APPROVAL IS REQUIRED IN INDONESIA TO PERMIT THE COMPANY TO CARRY ON BUSINESS IN INDONESIA WITHIN THE SCOPE OF ITS OBJECTS AND PURPOSES. THE COMPANY HAS NO DIRECT OR INDIRECT EQUITY INVESTMENT IN ANY OTHER ENTITY.

2. THE MAKING AND PERFORMANCE OF THE AMENDED LOAN AGREEMENT AND UNCLASSIFIED

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OF THE OPIC NOTES REFERRED TO THEREIN ARE WITHIN THE COMPANY'S CORPORATE POWERS, HAVE BEEN DULY AUTHORIZED BY ALL NECESSARY CORPORATE ACTION, AND THE AMENDED LOAN AGREEMENT IS, AND THE OPIC NOTES WHEN DULY EXECUTED AND DELIVERED FOR VALUE WILL BE, LEGAL, VALID AND BINDING OBLIGATIONS OF THE COMPANY ENFORCEABLE AGAINST THE COMPANY IN ACCORDANCE WITH THEIR RESPECTIVE TERMS. NO STOCKHOLDER CONSENT IS REQUIRED BY INDONESIAN LAW OR BY THE ARTICLES OF ASSOCIATION OF THE COMPANY OR ITS BY-LAWS FOR THE DUE

AUTHORIZATION OF THE AMENDED LOAN AGREEMENT OR THE OPIC NOTES TO BE EXECUTED AND DELIVERED BY THE COMPANY IN CONJUNCTION THEREWITH.

3. IN RELIANCE UPON THE CERTIFICATION OF REPRESENTATIVES OF THE COMPANY, AND TO THE BEST OF MY KNOWLEDGE AND BELIEF BASED UPON REASONABLE INQUIRY:

(A) THERE IS NO ACTION, SUIT, INVESTIGATION OR PROCEEDING PENDING OR THREATENED AGAINST THE COMPANY BY OR BEFORE ANY COURT, ARBITRATOR OR GOVERNMENTAL BODY WHICH MAY MATERIALLY ADVERSELY AFFECT THE COMPANY'S BUSINESS OR FINANCIAL CONDITION OR OPERATIONS;

(B) THERE EXISTS NO DEFAULT UNDER THE PROVISIONS THE AMENDED LOAN AGREEMENT OR OF ANY INSTRUMENT EVIDENCING ANY OUTSTANDING INDEBTEDNESS OF THE COMPANY OR UNDER THE PROVISIONS OF ANY AGREEMENT RELATING TO SUCH OUTSTANDING INDEBTEDNESS;

(C) THE COMPANY HAS FILED ALL TAXATION DOCUMENTS WHICH, TO THE KNOWLEDGE OF THE OFFICERS OF THE COMPANY, ARE REQUIRED TO BE FILED, AND HAS PAID ALL TAXES NOW DUE.

4. NEITHER THE EXECUTION NOR DELIVERY OF THE AMENDED LOAN AGREEMENT NOR OF THE OPIC NOTES, NOR FULFILLMENT NOR PERFORMANCE OF ANY OF THEIR TERMS, WILL BREACH OR CONFLICT WITH, OR RESULT IN A DEFAULT UNDER, OR RESULT IN THE CREATION OF ANY LIEN UPON ANY OF THE PROPERTIES OR ASSETS OF THE COMPANY PURSUANT TO, THE ARTICLES OF ASSOCIATION OR BY-LAWS OF THE COMPANY, AND AWARD OF ANY ARBITRATOR, ANY ORDER, JUDGMENT, DECREE, STATUTE, LAW, RULE OR REGULATION OR, IN ANY MATERIAL RESPECT, ANY AGREEMENT, INSTRUMENT OR OTHER CONTRACTUAL RESTRICTION BINDING ON THE COMPANY.

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5. NO AUTHORIZATION, EXEMPTION OR OTHER GOVERNMENTAL APPROVAL, NOT YET OBTAINED BY THE COMPANY, IS NECESSARY UNDER THE LAWS OF INDONESIA; (I) FOR THE EXECUTION, DELIVERY AND PERFORMANCE BY THE COMPANY OF THE AMENDED LOAN AGREEMENT AND OF THE OPIC NOTES, (II) FOR THE PAYMENT OF THE PRINCIPAL OF AND INTEREST AND PREMIUM, IF ANY, ON THE OPIC NOTES TO THE LENDER AND TO SUBSEQUENT HOLDERS OF THE OPIC NOTES IN UNITED STATES DOLLARS IN ACCORDANCE WITH THE TERMS THEREOF AND OF THE AMENDED LOAN AGREEMENT, OR (III) FOR THE ENFORCEMENT BY THE LENDER AND ITS SUCCESSORS OF THE AMENDED LOAN AGREEMENT AND THE OPIC NOTES IN ACCORDANCE WITH THEIR RESPECTIVE TERMS.

6. ON OR PRIOR TO THE DATE HEREOF, THE COMPANY HAS EFFECTED PAYMENT OF SUCH STAMP TAX AS WOULD BE PAYABLE TO INDONESIA IF THE

AMENDED LOAN AGREEMENT AND THE OPIC NOTES WERE TO BE ENFORCED IN THE COURTS OF INDONESIA ON THE DATE HEREOF.

7. THE CONCESSION AGREEMENT, DATED DECEMBER 4, 1969 AS AMENDED, BETWEEN THE GOVERNMENT OF INDONESIA AND A. SORIANO Y. CIA, IS IN FULL FORCE AND EFFECT AND HAS NOT BEEN AMENDED SINCE DECEMBER 4, 1969.

8. THE SOLE EXECUTION BY MR. ROBERT L. HOWE, AS ATTORNEY-IN-FACT OF THE COMPANY, OF THE AMENDED LOAN AGREEMENT, THE OPIC NOTES AND OTHER RELATED DOCUMENTS IS VALID UNDER INDONESIAN LAW; AND INDONESIAN LAW DOES NOT REQUIRE ANY ADDITIONAL FORMALITY SUCH AS A SEAL OR NOTARIZATION FOR VALID EXECUTION OF THE DOCUMENTS BY MR. HOWE.

9. THE WAIVER BY THE COMPANY OF INDONESIAN JURISDICTION, ITS SUBMISSION TO THE JURISDICTION OF U.S. COURTS AND ITS AGREEMENT TO APPLY NEW YORK LAW IN CONSTRUING THE AMENDED LOAN AGREEMENT AND THE OPIC NOTES, AS STIPULATED IN SECTIONS 7.05 AND 7.08 OF THE AMENDED LOAN AGREEMENT, ARE PROPER UNDER INDONESIAN LAW.

VERY TRULY YOURS,

C. THANK YOU FOR YOUR ASSISTANCE. KISSINGER

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